

second president. As a result the order of the A first president springs back to life.

*Order set aside.*

Solicitor: *Chang Min Tat.*

### LEMANIT v. PUBLIC PROSECUTOR

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah F.J. and Winslow J.) February 8, 1965]

[Singapore — Federal Court Criminal Appeal No. 57 of 1964]

*Criminal Law — Causing a bomb to explode — Intent to cause physical injury to persons and property — Arms Offences Ordinance (Cap. 112), ss. 2 and 4.*

*Evidence — Confession — Whether statement of accused was a confession — Evidence Ordinance (Cap. 4), s. 17(2).*

The appellant was convicted of the offence of using an arm, to wit by causing a bomb to explode with intent to cause physical injury to persons and property. The evidence established an intent to injure property but did not establish a clear intent to injure persons. The prosecution relied on a confession made by the appellant and recorded by a magistrate. One of the principal grounds of appeal was that the statement was not a confession and should not have been admitted in evidence.

**Held:** (1) the failure to prove both the intents that is the intent to cause physical injury to person and property is not fatal to a conviction under section 4 of the Arms Offences Ordinance as proof of either intent would suffice and no substantial miscarriage of justice could be said to have occurred in this respect as far as the trial judge's direction to the jury was concerned;

(2) the statement made by the appellant in this case was clearly inculpatory and therefore the statement was rightly recorded and admitted in evidence as a confession.

*Cases referred to:—*

(1) *Pika Bewa v. Emperor* (1912) I.L.R. 39 Cal. 855.

(2) *Anandagoda v. Queen*, [1962] 1 W.L.R. 823.

### FEDERAL COURT.

*Kirpal Singh* for the appellant.

*Tan Boon Teik* (Solicitor-General) for the Public Prosecutor.

**Wee Chong Jin C.J. (Singapore):** The appellant was charged before Chua J. sitting with a jury on 14th September, 1964 as follows:—

"That you, Lemanit bin Ahmad alias Hassan, on or about the 31st day of May, 1964, at about 8.38 p.m., at Royal Air Force Base, Changi (Technical Wing), Telok Paku Road, Singapore, did use an arm, to wit, by causing a bomb to explode with intent to cause physical injury to persons and property, and you have thereby committed an offence punishable under section 4 of the Arms Offences Ordinance (Chapter 112)".

At the conclusion of the trial on 23rd September, 1964 he was found guilty by the jury on a majority verdict of 5 to 2 with which the learned trial judge concurred and he was convicted accordingly.

After hearing submissions on the question of sentence which, for this particular offence is either imprisonment for life or a sentence of death, the learned judge sentenced him to death.

Counsel for the appellant preferred some eighteen grounds of appeal against the conviction and sentence which he submitted were unreasonable.

At the hearing of the appeal, he withdrew one ground of appeal thus leaving seventeen grounds which he proceeded to categorize under five main heads of appeal which may be summarised as follows:—

(a) that the learned trial judge failed to direct the jury that the charge against the appellant required proof of an intent on his part to cause physical injury both to persons and to property by causing the bomb in question to explode and that he misdirected the jury in directing them that the prosecution case was that the appellant had caused the bomb to explode with intent to cause injury to person or to property;

(b) that there was a misdirection in law and in fact on the ingredients required to prove the offence alleged by the prosecution and on the standard of proof required;

(c) that the learned trial judge misdirected the jury to the effect that the statement made by the appellant to the magistrate after his arrest was a confession (when it was merely a statement) and that they could act on it if they were satisfied that it was voluntarily made and that it was true;

(d) that there were misdirections of fact and of law relating to where certain exhibits were found, the evidence of certain witnesses, and on the inducement alleged by the appellant to have been held out to him;

(e) that the prosecution had failed to establish a *prima facie* case against the appellant at the close of the prosecution case.

Finally there were two of the usual type of grounds alleging that the verdict of the jury was unreasonable and could not be supported having regard to the evidence and that the sentence was excessive.

The case for the prosecution was that the appellant, accompanied by the prosecution witness, Hassan bin Ali (P.W.3), had been directed by the Indonesian Military Intelligence operating from Blakang Padang in the Rhio Archipelago to convey a bomb by stealth to Singapore and to explode it at the R.A.F. Base in Changi. The appellant was entrusted with this particular mission of exploding it.

On 30th May 1964, these two persons

arrived in Singapore, ostensibly as traders with merchandise consisting of rubber, and were granted temporary passes by the immigration authorities to enter Singapore. The bomb which had been tied to the keel of the sampan in which they had arrived, was subsequently retrieved by the appellant and taken by him to the house of a Chinese merchant (who had bought their shipment of rubber) where they spent the night. Next morning they proceeded to the R.A.F. Base, but owing to the presence of many people around, and the difficulty of breaking through the perimeter fence, they decided to postpone operations until they had acquired a wire-cutter to enable them to effect entry. Later that night they returned to the scene with a wire-cutter.

The appellant took off his shoes and socks and handed them to Hassan, who stood guard outside the fence while the appellant got into a drain below the fence and managed to squeeze himself through by bending some bars which had been erected to obstruct entry, carrying the bomb with him.

The wire-cutter accordingly was not used and was left behind when the witness Hassan walked away after the appellant had got through. When he was at some bushes he heard an explosion which caused him to get frightened and to drop the appellant's shoes and socks. He then went to Changi Village where he boarded a taxi back to town but he was arrested on the way.

After the appellant had effected entry, two young Indians who were walking along Telok Paku Road outside the fence in question, noticed some sparks near a parked aircraft within the fence. At the same time, they saw the figure of a man running towards the fence, climbing over it and jumping on to Telok Paku Road, crossing it, and then climbing over a gate into a nursery, where he disappeared after they had chased him into it. They immediately reported to an R.A.F. policeman at the barrier in Telok Paku Road. While they were thus engaged, they heard a loud explosion coming from the vicinity of the parked aircraft.

Further evidence was led to show that a block of T.N.T. explosive of about one pound in weight had been exploded about 12 yards from the aircraft in question which caused damage to the concrete tarmac adjacent to it in the form of a crater 1'6" x 1'1" and 6" deep. Fragments from the concrete were flung to a distance of 30 yards. The hole was 128'8" from the nearest point in the perimeter fence and 120 yards from the point of entry through the bars over the drain. It was also 37 feet from the aircraft which somehow escaped injury. It was also given in evidence that a slow burning fuse was used to detonate the block of T.N.T. which would

A give off sparks for the first 15 seconds.

The appellant was arrested on 1st June 1964 when he called at the immigration depot and he subsequently made a statement on 5th June 1964 to a magistrate, Mr. Tay Soo Tee.

This statement reads as follows:—

B "I came from Pulau Langsar, Indonesia. I was arrested by the Indonesian police and taken to Blakang Padang. On arrival there (Blakang Padang) the Indonesian police gave to me a bomb and said that if I did not carry it and explode it in Singapore I would be put in jail for six years.

C I received the bomb. One of their men, named Hasan followed me to Singapore. He accompanied me to the place where the bomb is to be exploded. If I did not explode the bomb, this man, Hasan would report back to the Indonesian police and that I would be shot by them when I returned to Indonesia. I was forced to set fire to the bomb and to throw it at a place where there were no people. For this reason I plead to your Honour to allow me to remain in Singapore because if I go back to Indonesia I will be shot dead.

D [Magistrate: I inform the accused that I am in no position to help him with respect to his desire to stay in Singapore.]

Q. Knowing that I (the magistrate) can't help you to stay in Singapore do you still wish to make your statement voluntarily.

A. Yes.

E Q. Is that all you wish to say?

A. Yes."

The learned trial judge admitted this statement as a confession after hearing evidence on an objection raised by the appellant that it was not voluntarily made.

F In his defence the appellant refuted the allegations made by the prosecution regarding his complicity in the affair of exploding the bomb as alleged. He retracted his confession and tried to establish an alibi in respect of the relevant period of time during which he was alleged to have been exploding the bomb. In the result G he was found guilty of the charge as aforesaid.

H We now turn to a consideration of the five main heads or grounds of appeal, as set out earlier, of which two, i.e. (a) and (c), above deserve special mention viz. those grounds alleging a failure to prove the charge as framed and a misdirection with regard to the statement made by the appellant to the magistrate respectively.

I With regard to ground (a), section 4 of the Arms Offences Ordinance (Cap. 112) provides the punishment where use of an arm as defined in section 2 thereof has been proved. "Use", in relation to a bomb, means "to throw the same, or to cause the same to explode, with intent to cause physical injury to any person or property". Where a bomb is exploded in the middle of the sea far removed from human beings or property capable of being damaged, there would, of course, be no "use" within the definition as no intent

of either kind could arise for consideration. Where a bomb is exploded in a part of a town or village which is teeming with people, one would certainly expect injury to both persons and property in circumstances where the intent to harm both could be inferred. The appellant's contention is that because of the heavier onus taken upon itself by the prosecution in alleging both intents in the charge as framed, it was wrong for the trial judge to direct the jury that proof of either intent would suffice. While we are of the opinion that, on the facts proved, there was little or no evidence of intent to injure persons, there certainly was ample evidence to justify a finding that whoever exploded the bomb in question did so with intent to damage property at least.

One does not infiltrate by stealth into a protected area, to wit, the technical wing of an air base such as the one at Changi, and explode a bomb on the concrete tarmac little more than 12 yards away from a parked aircraft therein without any intention to harm or injure someone or something and it seems to us that the inference of intent, which can be drawn, so clearly falls within the four walls of the intent required by the definition of "use" in the Arms Offences Ordinance as to render acceptance of any other intent than an intent to injure persons or property ludicrous. We agree however, that the evidence does not seem to establish any clear intent to injure persons and we therefore propose to consider the case on the basis that no such intent was proved.

The question that arises is whether failure to prove both intents is fatal to the conviction under section 4 which merely requires proof of at least one such intent. In our opinion it is not, and subject to our conclusions on the other grounds, we are of opinion that no substantial miscarriage of justice can be said to have occurred in this respect because, in our opinion, no jury could have arrived at any different result even if all these matters had been drawn to its attention.

There is no substance in ground (b). In fact we were amazed that complaint was made under this head which involves criticisms of propositions of law which have stood the test of time.

Ground (c) relating to the statement made by the appellant to the magistrate, does, however, merit attention. Counsel for the appellant submitted that this statement was not a confession. This statement has been set out in full earlier in this judgment and we are at a loss to appreciate why it cannot be regarded as a confession having regard to the clear terms of section 17(2) of the Evidence Ordinance (Cap. 4) which reads —

A " (2) A confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence".

B Mr. Kirpal Singh submitted, on behalf of the appellant, that the magistrate was not satisfied that the statement was voluntary, that it was not a confession, and that it should not have been recorded. He further submitted that an inducement had been offered to the appellant which rendered it irrelevant because the magistrate told him that he could not help him to stay in Singapore when the appellant expressed a desire that he should do so as otherwise he would be shot on his return to Indonesia.

C To dispose of the allegation of inducement first, we can find nothing in the record which suggests that any such inducement was held out to the appellant. During the recording of his confession, which the magistrate states that he had reason to believe was voluntarily made, the appellant asked him to allow him to stay in Singapore. The magistrate very properly told him he could not help him in the matter at all. How this can be said to be an inducement is beyond our comprehension.

E A more important matter relating to the statement, however, relates to the question whether it was in fact a confession as the learned trial judge told the jury it clearly was as it implicated the appellant.

F In *Pika Bewa v. Emperor* <sup>(1)</sup> Holmwood and Sharfuddin JJ. held that where the only evidence of an offence is a statement by the accused and it is relied on by the prosecution as evidence thereof it must be taken as a whole, and nothing must be read into it which is not contained therein. As they said, "it is all the evidence we have; and when the accused's own statement is to be relied upon, it must be taken as a whole, and nothing can be read into it which is not found within the four walls of the statement".

G On the facts of that case it was clear that Pika Bewa administered a drug to her husband which she thought was some charm or love potion to procure the love of her husband. This is all she said in her statement and there was nothing within the four walls of that statement to incriminate her although it turned out on the rest of the evidence that the drug itself was a poison which caused her husband's death.

H In *Anandagoda v. The Queen* <sup>(2)</sup> Lord Guest said —

I "The test whether a statement is a confession is an objective one, whether to the mind of a reasonable person reading the statement at the time and in the circumstance in which it was made it can be said to amount to a statement that the accused committed the offence or which suggested the inference that he committed the offence. The statement must be looked at as a whole and it must be considered on its own terms without

reference to extrinsic facts. In this connection their Lordships consider that the view expressed by Gratiaen J. in *Seyadu v. King*, "The test of whether an "admission" amounts to a "confession" within the meaning of section 17(2) must be decided by reference only to its own intrinsic terms' is correct. It is not permissible in judging whether the statement is a confession to look at other facts which may not be known at the time or which may emerge in evidence at the trial. But equally it is irrelevant to consider whether the accused intended to make a confession. If the facts in the statement added together suggest the inference that the accused is guilty of the offence then it is nonetheless a confession even although the accused at the same time protests his innocence."

Applying this test to the statement made by the appellant in the case before us, it appears to us that although it contains protestations of innocence in some respects, it does contain, taken as a whole without reference to extrinsic facts, an admission suggesting the inference that he committed the offence for which he had been arrested and on which he was subsequently charged. He clearly admits exploding a bomb at a place in Singapore. It is true that he states that he exploded it at a place where there were no people. This shows that he had no intent to cause injury to persons but there is nothing in the statement which indicates that he had no intention to cause injury to property. It therefore seems to us that the statement as a whole suggests the inference that he exploded a bomb at a place in Singapore with intent to damage property. In *Anandagoda's* case where the appellant was charged with murder by running over the deceased with a motor car, his statements considered by themselves, contained no admission that he was driving the car in question or that if he was driving it he ran over the deceased deliberately.

The statement before us is clearly inculpatory whereas the statements made by *Pika Bewa* and *Anandagoda* were not. If a man explodes a bomb at a place in Singapore where there are no people it seems to us reasonable to conclude, looking at the matter objectively, that he must have intended to cause damage to property at least, whether movable or immovable.

We are therefore, of the opinion that the complaint directed in ground (c) against the admission of the statement as a confession has no validity.

With regard to ground (d) we are satisfied that the learned trial judge did not misdirect the jury in relation to the finding of certain exhibits or the evidence of certain witnesses. In fact we are satisfied that he directed them fairly and carefully with regard to these matters and that therefore, the appellant was in no way prejudiced.

We do not think it is necessary to comment on ground (e) on the failure of the prosecution

A to establish a *prima facie* case at the close of the prosecution case. Counsel for the appellant did not appear to place very much reliance on this ground himself and admitted that in the court below he made no submission at the close of the prosecution case. He even admitted that he was not aware of the difference between the procedures applying where a judge sits alone and where he sits with a jury and when his attention was drawn to section 194 of the Criminal Procedure Code he appeared to abandon this ground.

B Finally we do not consider that the verdict of the jury was unreasonable and that it could not be supported having regard to the evidence. C While it is true that the case against the appellant rested largely on his own confession and the evidence of an accomplice, we are satisfied that these matters were carefully explained to the jury in circumstances where they could have been left in little doubt as to what their powers were if they were not fully satisfied with the evidence on these matters or felt any hesitation in acting on such evidence. D

E There now remains the question of sentence which was said to be excessive. In the context of the present volcanic situation which exists between Malaysia and Indonesia when Indonesian agents and saboteurs are perpetrating acts directed towards undermining the security of the State, it must be obvious that there can be only one sentence for an offence of this kind when it is proved to have been committed by such an agent or saboteur. Any leniency in this respect would not only be misplaced but is bound to be construed by the enemies of the State as a sign of weakness in implementing provisions of the law designed to eradicate such offences and to deter such offenders. F

G The appeals against conviction and sentence are accordingly dismissed.

*Appeal dismissed.*

Solicitors: *Mallal & Namazie.*

## EU TONG SEN FINANCE LTD. v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) February 13, 1965]

[Ipoh — Criminal Appeal No. 87 of 1964]

I *Dangerous drugs — Forfeiture of vehicle in which raw opium was found — Vehicle in possession of hirer under hire purchase agreement — Whether offence committed without knowledge, consent or connivance of owner — Whether owners entitled to possession — Dangerous Drugs Ordinance 1952, s.30(2).*

*Hire purchase — Vehicle under — Absolute assurance against misuser.*

In this case raw opium was found in a secret compartment in a car and the car was seized. The car was owned by the appellants but it had been hired under a hire purchase agreement to one Hong Siew Han. The hire-purchase agreement provided that the hiring shall